

September 10, 1998

Did President Clinton and Vice President Gore Violate Federal Election Laws?

You've seen the headlines. Just within the past three weeks the *Washington Post* carried the following headlines on its front page:

(Sept. 9): **"Reno Sets 90-Day Clinton Probe: Process Could Lead to Independent Counsel on Campaign"**

(Sept. 4): **"FEC Audit Led to New Clinton Probe: '96 Campaign Found to Benefit Illegally From 'Issue Ad' Spending"**

(Sept. 3): **"Clinton Faces New Campaign Probe"**

(Sept. 2): **"Reno Orders Preliminary Ickes Probe"**

(Aug. 27): **"Reno Orders 90-Day Investigation of Gore"**

(Aug. 21): **"Fund-Raising Memo Leads to New Probe of Gore Role: Aide's Notes Hint at Calls Seeking 'Hard Money'"**

In early 1997, the United States Senate directed its Committee on Governmental Affairs to conduct an investigation into the fundraising practices that were used during the 1996 federal elections. The Committee held hearings during 1997 and issued its report in early 1998. (A short summary of the Committee's six-volume final report is reprinted on page 4 of this paper.)

Now, the newspapers contain numerous stories of investigations by the Department of Justice into the fundraising practices of President Clinton, Vice President Gore, and their subordinates. But, what were the President, the Vice President, and others doing that deserves renewed attention? The report of the Committee on Governmental Affairs lays out the case for why the campaign activities of Messrs. Clinton and Gore and the Clinton-Gore campaign require the appointment of an independent counsel. The remainder of this paper summarizes that case.

The following excerpts (very lightly edited by RPC) on possible violations of federal election laws are taken entirely from a memorandum entitled, "Staff Analysis of Governmental Affairs Committee's Special Investigation With Respect to Matters Warranting Appointment of an Independent Counsel Relative to Misuse of Soft Money" (undated) which was prepared by the Majority Staff of the U.S. Senate Committee on Governmental Affairs. The report that is cited within the memorandum is "Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns," S. Rept. No. 105-167 (in 6 vols.), 105th Cong., 2d Sess. (1998) (Final Report of the Comm. on Governmental Affairs of the U.S. Senate).

Under federal campaign finance law, a presidential candidate who accepts federal matching funds for his campaign agrees to limit the money he will raise for, and spend on, his campaign. The President and his senior advisers developed a plan to exceed — by \$44 million — federal spending limits on presidential campaigns through the misuse of "soft money." The President acknowledged that he was using the Democratic National Committee (DNC) to raise and spend soft money to support his own reelection campaign. *Senate Report No. 105-167, Vol. I, pp. 58-62 [hereinafter, Report].*

To implement the plan, the President misused his control of the DNC. He installed Harold Ickes to run the DNC as an adjunct to the Clinton-Gore campaign. The President and Ickes would determine how the DNC's money would be raised and spent to ensure that it would be used to support the President's reelection. *Report, Vol. I, pp. 107-114.*

The DNC's soft money was converted into television ads designed to promote the President's reelection. This occurred through the President's control and coordination of the DNC's advertising campaign. The President reviewed, modified, and approved all DNC advertising copy, time buys, and polling questions. *Report, Vol. I, pp. 122-123.* The ads contained messages clearly intended to promote President Clinton's reelection. The Committee concluded that the ads contained an "electioneering message" within the meaning the Federal Election Commission (FEC) has given that term. *Report, Vol. III, pp. 4474-4479.*

Not only was the President responsible for directing the DNC's spending of soft money for his campaign, but he also designed and implemented efforts to raise those funds. The President hosted 103 fundraising coffees in the White House. Witnesses testified that direct fundraising appeals were made at these coffees on public property. The President also ordered that the White House be used as a fundraising tool to cultivate donors through overnight visits and myriad other perquisites. Contributions from coffee attendees totaled \$26.4 million, and overnight White House guests contributed more than \$5 million. Some of these events were attended virtually exclusively by foreign citizens, who could not legally contribute to American campaigns. *Report Vol. I, pp. 193-223.* White House officials disregarded indications that the funds raised were illegal and brushed aside any warnings to that effect. *Report, Vol. II, pp. 2499-2516.*

The Vice President also played a direct role in raising funds. He made at least 52 telephone calls, which raised as much as \$795,000. Although these calls appeared to violate federal law, the Attorney General refused to seek the appointment of an independent counsel based

on factual assertions that the Committee subsequently showed were in error. Portions of these funds were deposited in the DNC's hard money account, and were thus "contributions" within the meaning of federal election law even under Attorney General Reno's view. The Committee obtained memos addressed to the Vice President informing him that the calls would raise hard money, memos that witnesses testified the Vice President would have seen. The Vice President's staff knew that the Attorney General's factual assumptions were in error, but never made any attempt to bring the true facts to her attention. *Report, Vol. I, pp. 501-522.*

Despite Attorney General Reno's dismissal of claims that the misuse of soft money violated Federal election laws, and [her claim] that she was merely following FEC pronouncements, the Committee showed that the Clinton-Gore campaign misused campaign funds. The FEC never has exclusively adopted the "express advocacy standard" that Reno attributed to it, but consistently has also applied an "electioneering message" standard to determine whether an ad must be paid for with hard money. *Report, Vol. III, pp. 4478-4479; Additional Views of Sen. Fred Thompson, Vol. III, pp. 4527-4531.*

The Committee also concluded what FEC investigators have determined — namely, that coordination and direct involvement of the candidate in advocacy of the type the Clinton-Gore campaign engaged in with the DNC results in in-kind contributions subject to federal spending limits. Under FEC regulations and decisions, any issue advertisement containing an electioneering message and coordinated with a candidate falls under the definition of "contribution" and [is subject to] its applicable limits. *Report, Vol. III, pp. 4479-4485; Additional Views of Sen. Fred Thompson, Vol. III, pp. 4527-4531.*

The government provided the Clinton-Gore campaign with matching funds only after the President and Vice President certified to the FEC that they would adhere to spending limits. The Committee concluded that the Clinton-Gore campaign circumvented the campaign spending limitations, which the government imposes as a condition of receipt of federal matching funds. President Clinton and Vice President Gore could not have obtained the [U.S. Government's] matching funds without certifying that they would adhere to the spending limitations. These certifications were filed to induce the FEC to provide the matching funds. According to published reports concerning Justice Department memoranda, Charles LaBella and FBI Director Freeh have reached conclusions similar to the Committee's. *Report, Vol. I, pp. 125-128.*

The FEC audit, conducted by career, non-political FEC professionals, has resulted in information that is consistent with Committee conclusions and which was published in the Committee report. These career FEC public servants know the law and are required by statute to audit the use of federal matching funds. These auditors must certify that every campaign expenditure is a qualified expense under Federal election law. The auditors' conclusions that this certification could not be made are consistent with the earlier findings of the Senate Committee on Governmental Affairs.

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**Preface to the Final Report
of the Committee on Governmental Affairs
of the United States Senate
in its
Investigation of Illegal or Improper Activities
in Connection with 1996 Federal Election Campaigns
(Senate Report 105-167, Vol. I, page 3)**

"In mid-1995, the President and his strategists decided that they needed to raise and spend many millions of dollars over and above the permissible limits of the Presidential campaign funding law if the President was going to be reelected. They devised a legal theory to support their needs and proceeded to raise and spend \$44 million in excess of the Presidential campaign spending limits.

"The lengths to which the Clinton/Gore campaign and the White House-controlled Democratic National Committee were willing to go in order to raise this amount of money is essentially the story of the 1966 Presidential campaign scandal. The President and his aides demeaned the offices of the President and Vice President, took advantage of minority groups, pulled down all the barriers that would normally be in place to keep out illegal contributions, pressured policy makers, and left themselves open to strong suspicion that they were selling not only access to high-ranking officials, but policy as well. Millions of dollars were raised in illegal contributions, much of it from foreign sources. When these abuses were discovered, the result was numerous Fifth Amendment claims, flights from the country, and stonewalling from the White House and the DNC.

"Over a brief period of three months of hearings, the Committee was able to fulfill its responsibility in laying out the available facts to the American people. A much clearer picture of what happened during the 1996 Presidential campaign has been developed and presented. However, many questions remain unanswered. It is now the responsibility of the Attorney General or, more appropriately, an independent counsel to take these facts and aggressively pursue any and all indications of criminal wrong-doing. . . ."